IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO.634 OF 2003
IN
NOTICE OF MOTION NO.2921 OF 2003
IN
L.C. SUIT NO.3626 OF 2003

Dr.Mohan N. Bhawe ... Appellant

V/s.

The Municipal Corporation
of Greater Bombay ... Respondent

Mr.Thomas Almeida for Appellant
Mr.J.Xavier for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **NOVEMBER 29, 2004**

ORAL JUDGMENT:

. This Appeal from Order has been filed against an order refusing ad-interim relief. The short question involved in the present Appeal from Order is whether any relief ought to have been granted to the appellant in a suit where he challenges the notice issued to him under section 55(1) of the Maharashtra Regional Town Planning Act (for short, 'the Act'). The appellant relies on the judgment of the Division Bench in the case of *The Raja Bahadur Motilal Poona Mills Ltd. & Anr. v/s. State of Maharashtra & Ors.,* **2002 (4) ALL MR 429** to submit that an appeal lies for challenging the order passed under section 55 of the Act and proceedings before civil Court are not barred as stipulated in section 149 of the Act.

The appellant claims to have purchased on ownership basis from a builder a flat admeasuring 784 sq.ft. alongwith the adjoining terrace admeasuring 450 sq.ft. in a building situated at Vile Parle (East), Mumbai. The appellant contends that he purchased the flat alongwith the adjoining terrace in which there was already a parapet wall constructed to the height of 4 feet. The appellant contended that the cooperative society issued him a share certificate in respect of the flat purchased by him. A notice dated 23.6.2003 is issued to the appellant under section 55(1) of the Act for unauthorised development. The notice was issued for unauthorised construction of walls in the open terrace; opening a door on to the terrace; for construction of a roof with AC sheets. The appellant brought certain evidence on record in respect of his claim that when he purchased the flat, it was conveyed to him alongwith the adjoining terrace which had a parapet wall of height of 4’. The appellant filed a suit challenging this notice and praying for a declaration and injunction in respect of the notice issued to him on 23.6.2003 under section 55 of the Act.

2. At the ad-interim stage, the trial Court has refused to grant any relief to the appellant, mainly because the notice challenged by the appellant is issued by the planning authority and no such notice issued by

the planning authority can be questioned in any suit or other legal proceeding because of the bar under section 149 of the Act. The trial Court has relied on the judgment of this court in Appeal from Order 813 of 1982 dated 11.10.2002 of Rebello, J. wherein it has been held that a suit is barred under section 149 of the Act.

3. Mr.Almeida, learned Counsel for the Appellant, submits that the trial Court was in error in relying on the judgment of the learned Single Judge of this Court rather than the judgment of the Division Bench in the case of *The Raja Bahadur Motilal Poona Mills Ltd.* (supra). He submits that the bar under section 149 of the Act is limited and is not attracted when a notice under section 55(1) is challenged.

4. The judgment in *The Rajabahadur Motilal Poona Mills Ltd* (supra) is not applicable to the present case. The permission granted to the builder to develop the property on the existing construction by utilising the transfer of development rights was challenged in a writ petition. The Division Bench while considering whether the writ petition is maintainable to challenge such permission, held that grant or refusal of permission under section 45 of the Act would not necessarily lead to the conclusion that a writ petition is maintainable. The Division Bench while considering the provisions of

sections 45, 47 and 149 of the Act has held that the bar as spelt out under section 149 is limited and what is barred is questioning of an order made under the Act in the civil suit. However, the Division Bench was of the view that an appeal having been provided under section 47 of the Act to challenge the orders or permissions granted under section 45, the bar of section 149 is not attracted and a writ petition is not maintainable.

5. It would be necessary to examine certain provisions of the Act. Section 55 reads thus:

> 55. (1) Notwithstanding anything hereinabove contained in this Chapter, where any person has carried out any development of a temporary nature unauthorisedly as indicated in sub-section (1) of section 52, the Planning Authority may by an order in writing direct that person to remove any structure or work erected, or discontinue the use of land made, unauthorisedly as aforesaid, within fifteen days of the receipt of the order; and if thereafter, the person does not comply with the order within the said period, the Planning Authority may request the District Magistrate or the Commissioner of Police, as the case may be, or authorise any of its officers or servants, to have such work summarily removed or such use summarily is discontinued without any notice as directed in the order, and any development unauthorisedly made again, shall be similarly removed or discontinued summarily without making any order as aforesaid.
>
> (2) The decision of the Planning Authority on the question of what is development of a temporary nature shall be final.

Section 149 of the Act reads thus:

> 149. Finality of orders.-

> Save as otherwise expressly provided in this Act, every order passed or direction issued by the State Government or order passed or notice issued by any Regional Board, Planning Authority or Development Authority under this Act shall be final and shall not be questioned in any suit or other legal proceedings.

6. In the present case, the impugned notice is issued by the planning authority that is the Municipal Corporation or the officer of the Municipal Corporation who is empowered to issue such a notice that is the Assistant Municipal Commissioner. An order passed under section 55 of the Act regarding unauthorised temporary development is not only final under section 55(2) but also cannot be challenged in a suit or other legal proceeding since the order is passed by the planning authority. There is no dispute that the planning authority exercises its powers and functions under section 55 through the Municipal Commissioner or such officer as may be appointed in this behalf. The Assistant Commissioner having been thus authorised to act, there is no dispute that he exercised his jurisdiction and powers while issuing notice under section 55 of the Act and his orders are final. Section 149 makes it amply clear that an order passed by the Planning Authority (i.e., the Mumbai Municipal Corporation Act in this case) is final and cannot be challenged in a suit. Obviously, therefore, a suit questioning the notice issued under section 55 will not

lie.

7. In this view of the matter, I see no reason to interfere with the finding of the trial Court. There is obviously a bar to the jurisdiction of the civil Court in respect of a notice issued under section 55(1) of the Act.

8. In the result, Appeal from Order is dismissed. No costs.

9. On the request of Mr.Almeida, the stay granted earlier shall continue for a further period of four weeks.

10. Certified copy expedited.